STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of MIRANDA GARBULINSKI,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MELISSA GARBULINSKI,

Respondent-Appellant,

and

ALFRED LETSON II,

Respondent.

UNPUBLISHED
July 17, 2003

No. 244301
Bay Circuit Court
Family Division
LC No. 00-006992-NA

In the Matter of MIRANDA GARBULINSKI,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ALFRED LETSON II,

Respondent-Appellant,

and

MELISSA GARBULINSKI,

Respondent.

No. 244544
Bay Circuit Court
Family Division
LC No. 00-006992-NA

Before: Neff, P.J., and Fort Hood and Borrello, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from the trial court's order terminating their parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i) (respondent Garbulinski only) and (g) (both respondents). We affirm.

The factual background and procedural history of these cases are extensive. The trial court presided at two termination hearings and issued two comprehensive written opinions, which demonstrate her intimate familiarity with the parties, the facts, the various witnesses who testified, the exhibits, and the applicable legal principles. This was by no means an easy case and the trial judge was sensitive to the competing and sometimes conflicting considerations necessarily involved in cases involving the termination of parental rights.

I. Docket No. 244301

Respondent Garbulinski argues that the trial court erred in finding that the statutory grounds for termination under MCL 712A.19b(3)(c)(i) and (g) were proven by clear and convincing evidence. In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). This Court reviews the trial court's findings of fact under the clearly erroneous standard. MCR 5.974(I)[1]; *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). Under this standard, the trial court's decision "must strike [the reviewing court] as more than just maybe or probably wrong." *In re Trejo, supra* at 356, quoting *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). A finding is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been made. *In re Miller, supra* at 337.

A

We agree that the trial court erred in finding that termination was warranted under § 19b(3)(c)(i). At the time of the second termination hearing, respondent Garbulinski had resolved many of the conditions that originally led to adjudication. She was no longer involved in a violent relationship, she was managing her bipolar and borderline personality disorders, and she was no longer engaging in violent, criminal, or erratic behavior. However, this error does not require reversal because the trial court is only required to find a single statutory ground for termination. *In re Sours, supra* at 632.

---

[1] The court rules governing child protective proceedings were amended and recodified as part of new MCR subchapter 3.900, effective May 1, 2003. This opinion refers to the rules in effect at the time of the trial court's decision.

The trial court did not clearly err in finding that termination was warranted under § 19b(3)(g). To warrant termination under this subsection, a petitioner must prove both that the respondent parent failed to provide proper care or custody and that there is no reasonable expectation that the parent will be able to do so within a reasonable time.

Respondent Garbulinski does not dispute that she failed to provide proper care when she was living with her children in a violent, chaotic household. Her argument focuses on the second prong of this subsection, the finding of anticipatory neglect. She contends that the trial court clearly erred in finding "no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time" where she had been maintaining stability and successfully caring for another infant.

The trial court acknowledged that respondent Garbulinski had demonstrated a full year of stable behavior, but ordered termination based on the gap between her child's urgent need for permanency and respondent Garbulinski's need for many more months of proven stability. This finding is supported by the evidence presented at both the first and second termination hearings. Both Dr. Douglas Foster and Erin Worth agreed that respondent Garbulinski's ability to maintain stability while assuming care of her child remained highly uncertain because bipolar patients are highly susceptible to stress and caring for an emotionally disturbed child is extremely stressful. The trial court reasonably relied on their assessment, as both of these witnesses had worked with respondent Garbulinski for long periods, and both were familiar with the progress she had made during the year preceding the termination hearing.[2] Given the high risk that respondent Garbulinski's stability would collapse if strained by the demands of caring for an emotionally disturbed child, and the length of time required to determine whether she could manage, the trial court did not err in determining that there was no reasonable expectation that respondent Garbulinski would be able to properly care for the child within a reasonable time.

Respondent Garbulinski argues that the trial court erred in its findings because it assumed that she was too fragile to meet her child's special needs when there had not been a reliable assessment of those needs. Whatever the root cause of the child's problems, however, the salient question is whether the trial court erred in finding that respondent Garbulinski would be unable to care for her. Although there is evidentiary support for respondent Garbulinski's argument that the child's special needs required a more thorough assessment, more importantly, there is substantial support for the trial court's finding that respondent Garbulinski lacked the capacity to meet the child's extensive special needs. Nor is there any indication that a more thorough assessment of the child's problems improves the outlook for respondent Garbulinski's ability to adequately deal with those problems. Additionally, even if respondent Garbulinski is correct in her assessment that some of the child's behaviors were attributable to physical causes, this

---

[2] In contrast, see *In re Kucharski*, ___ Mich ___; 661 NW2d 216 (2003), slip op at 11-12 (where our Supreme Court held that a trial court erred in relying on a therapist's opinion that there was no bonding between the respondent mother and her child, when the therapist had observed the two for less than an hour).

explanation does not fully account for the most troubling behavior such as aggression, head banging, finger chewing, night terrors, and refusal to eat.

Finally, respondent Garbulinski argues that the trial court distorted evidence when it cited her future plans with Bob Trudell and a minor incident during a shopping trip as indicia of how precarious her mental health remains. We disagree. The trial court's interpretation of the shopping incident is not unreasonable or erroneous; it could be seen as evidence that respondent Garbulinski progressed just far enough to maintain control after a minor provocation, but not more significant events. Although respondent Garbulinski did not give a timeframe for her plans to combine her household with Trudell's, her repeated statements that she wanted to get out of the trailer park reasonably could be interpreted as an expression of urgency. The fact that respondent Garbulinski was contemplating adding a live-in male partner, his three teenage children, and his mid-twenties stepbrother to her household, at a time when she was purportedly planning a gentle transition for her child, can reasonably be viewed as evidence that she did not fully grasp the ramifications this household change could have on her child, whose fragile emotional health depended on consistency and routine.

In sum, the trial court's findings under § 19b(3)(g) are not clearly erroneous. There was sufficient evidence to show the absence of a *reasonable* expectation that respondent Garbulinski would be able to care for the child within a *reasonable* time. Respondent Garbulinski understandably argues that this finding is clearly erroneous in light of her remarkable and unanticipated progress over the course of a year, even with the stressful events of losing parental rights to another child and assuming care of a newborn. However, these were not the only pertinent considerations in the difficult matter of predicting future events. The trial court did not err in evaluating the totality of the evidence in this fact-intensive case, and in determining that evidence of respondent Garbulinski's good year was outweighed by her long history of instability, Dr. Foster's qualified and guarded prognosis, the causal relationship between stress and bipolar relapses, and Worth's assessment of the child as one with exceptionally demanding and stressful needs.

B

Respondent Garbulinski also argues that the trial court improperly based its decision on evidence that termination was in the child's best interests, and on comparisons between her home and the foster parents' home. We disagree.

Once a petitioner establishes by clear and convincing evidence that a statutory basis or bases for termination exists, the court must order termination of parental rights unless it finds from evidence on the record that termination is clearly not in the child's best interests. MCL 712A.19b(5); *In re Trejo, supra* at 352-353. Under this scheme, a trial court's decision to terminate parental rights contemplates a two-step procedure. First, the court must find clear and convincing evidence of statutory grounds to terminate parental rights, in which case it must order termination, unless, in the second step, it finds that termination is clearly not in the child's best interests. See MCR 5.974(D), (E), and (F)(3). If statutory grounds for termination are not present, there is no occasion to address whether termination is in the child's best interests. *In re Kucharski*, ___ Mich ___; 661 NW2d 216 (2003), slip op at 15; MCL 712A.19b(5). Clearly, a trial court cannot, under any circumstances, terminate parental rights in the absence of statutory grounds merely because it appears the child would be better off in an adoptive or foster home.

Closely related to this process is the firm and long-standing principle that the court in a child protective proceeding cannot compare the foster home to the natural parents' home. Our Supreme Court stated in *Fritts v Krugh*, 354 Mich 97, 115; 92 NW2d 604 (1958):

> It is totally inappropriate to weigh the advantages of a foster home against the home of the natural and legal parents. Their fitness as parents and question of neglect of their children must be measured by statutory standards without reference to any particular alternative home, which may be offered to the children.

In *Kucharski*, *supra*, slip op at 15, our Supreme Court recently reversed an order terminating parental rights where it found that the trial court erred in finding a statutory ground for termination. The Court noted that the trial court apparently took into consideration "improper comparisons between the homes of the adoptive and natural parents," and admonished trial courts to avoid such comparisons. *Id.*, slip op at 15 n 21.

We agree that there were several instances where the *testimony* focused on witnesses' observations of how the child reacted to separating from the foster parents, and their opinions on how the child would be affected if she were returned to respondent Garbulinski. However, the final decision belonged to the trial court, not the witnesses, and the trial court properly based its decision on the statutory grounds. The trial court's written opinion discusses respondent Garbulinski's history of mental illness, her recent progress and prognosis, the role of stress in triggering the illness, and the precariousness of her mental stability. The analysis focused on the statutory grounds for termination, not the child's best interests. The trial court's discussion of the child's best interests came only after its conclusion that statutory grounds were present. Only then did the trial court discuss how the child was more likely to receive the consistency she needed in the foster parents' home. Despite the extensive testimony concerning the child's attachment to the foster parents and her severe reaction to separation, the trial court correctly focused on respondent Garbulinski's ability to provide proper care and custody. We therefore affirm the order terminating respondent Garbulinski's parental rights to the child.

II. Docket No. 244544

Respondent Letson argues that the trial court erred in finding sufficient evidence to terminate his parental rights under § 19b(3)(g). We disagree. The trial court relied on evidence that respondent Letson failed to understand and appreciate the child's special needs. Despite Worth's repeated advice that the child critically needed consistency and routine, respondent Letson and his wife Judy continually exposed her to unstructured activities in the belief that she needed to learn to have fun. The evidence also supported a causal connection between the child's adverse behavior and her visits with the Letsons. Evidence that respondent Letson failed to recognize how his "parenting style" was contrary to the child's critical needs, and failed to adapt his "parenting style" in accordance with those needs, was sufficient to establish that he failed to provide proper care and custody and that there was no reasonable expectancy that he would become able to do so.

On appeal, respondent Letson's argument focuses almost entirely on the medical diagnosis of failure to thrive. This argument seems to be based on the assumption that the child's adverse behaviors were a form of failure to thrive, and that the trial court wrongly attributed the failure to thrive to respondent Letson's contact with the child. This argument is

irrelevant to the trial court's findings and conclusions in this case. The only mention of failure to thrive was at a review hearing, where Worth testified that the child was seriously underweight and almost to the point where practitioners "start to look at a possible diagnosis of failure to thrive." Petitioner did not base its termination case on failure to thrive, but on the child's adverse behavior and respondent Letson's failure to respond appropriately. Nothing in the record supports respondent Letson's suggestion that the adverse behaviors in themselves constituted failure to thrive. Respondent Letson therefore has not raised any viable argument that the trial court erred in finding sufficient evidence to terminate his parental rights.

Affirmed.

/s/ Janet T. Neff
/s/ Karen M. Fort Hood
/s/ Stephen L. Borrello